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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
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08/484,928 06/07/95 MICHELSON

G P-12509

EXAMINER

F3M1/0623

LEWIS ANTEN
SUITE 411
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EXAMINER, M

PAPER NUMBER

3301
DATE MAILED:

06/23/97

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☐ Responsive to communication(s) filed on _____

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-26, 28-51, 53-75, 77-82, 84-96, 98, 101-132 and 135-167 is/are pending in the application.
Of the above, claim(s) _____ is/are withdrawn from consideration.
- ☒ Claim(s) 136 is/are allowed.
- ☒ Claim(s) 1-24, 26, 28-50, 53-74, 77-82, 84-96, 98, 101-122, 124-132 and 135-167 is/are rejected.
- ☒ Claim(s) 25, 51, 75, 123 and 130 is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☐ Notice of Reference Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

--SEE OFFICE ACTION ON THE FOLLOWING PAGES--

BEST AVAILABLE COPY

Art Unit: 3301

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 22, 26-29, 48, 53-54, 72, 77, 94, 98-103, 120, 124-126, 131, 137-138, 145 and 158-162 are rejected under 35 U.S.C. § 102(b) as being clearly anticipated by Kuntz.

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 5-7, 9-10, 17-20, 30-32, 34-35, 42-45, 55-57, 59-60, 67-70, 78-82, 89-92, 104-105, 107-108, 115-118, 132 and 153-157 rejected under 35 U.S.C. § 103 as being unpatentable over Kuntz in view of Bagby, as set forth in the previous office action, Paper No. 2.

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Claims 8, 13, 33, 38, 58, 63, 80, 85, 106, 111, 128, 141 and 148 are rejected under 35 U.S.C. § 103 as being unpatentable over Kuntz in view of Ray '260, as set forth in the previous office action, Paper No 2.

Claims 11-12, 14-16, 23-24, 36-37, 39-41, 49-50, 61-62, 64-66, 73-74, 84, 86-88, 95-96, 109-110, 112-114, 121-122, 127, 129, 135, 139-140, 142-144, 146-147 and 149-151, are rejected under 35 U.S.C. § 103 as being unpatentable over Kuntz in view of Brantigan '915, as set forth in the previous office action, Paper No. 2.

Claims 21, 47, 71, 93 and 119 rejected under 35 U.S.C. § 103 as being unpatentable over Kuntz in view of Ray '740, as set forth in the previous office action, Paper No. 2.

Claims 163-167 are rejected under 35 U.S.C. § 103 as being unpatentable over Kuntz.

Kuntz discloses in figure 12-15 a frusto-conical shaped implant, substantially as claimed. However, Kuntz does not disclose what the length and diameter of the implant is. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the implant as disclosed by Kuntz could be constructed of the lengths and the ranges recited in claims 163-167 because it is a design choice when determining the length and diameter of the implant.

Claims 25, 51, 75, 123 and 130 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Claim 136 is allowable over the prior art of record.

Any inquiry concerning this communication should be directed to Michael Brown at telephone number (703) 308-2682.

M. Brown
20 June 1997